

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5031 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATHUBHAI NATUBHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR PR NANAVATI for Petitioners

MR.A.J.DESAI,ADDL. PUBLIC PROSECUTOR for Respondent No. 1

MR VM PANCHOLI for Respondent No. 2

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 10/10/97

ORAL JUDGEMENT

The present petition under section 482 of the Code of Criminal Procedure is directed for quashing of the complaint dated 18.12.1996 in respect of the offences punishable under sections 365 and 504 of the Indian Penal Code against the present petitioners. The said complaint was registered as CR.I-343/96 with Sanand Police Station

by the second respondent herein. It was alleged in the said complaint that at about 3.30 p.m. on 18.12.1996 the petitioners-accused had taken Shri Girishkumar Manilal Patel, who is the husband of the second petitioner, and kidnapped him forcibly on account of alleged illicit relations between the petitioner No.1 and the petitioner No.2.

It appears that the investigating agency investigated into the alleged offences against the petitioners by recording statements of several witnesses, including that of the said Girishkumar Manilal Patel, who was alleged to have been kidnapped by the petitioners. However, there was nothing incriminating found against the petitioners in the course of the investigation by the police. The police consequently made a report on 7.1.1997 seeking 'C' summary in respect of the aforesaid complaint.

The learned Magistrate, in purported exercise of his powers under section 190(1)(b) of the Code of Criminal Procedure, did not accept the above report of the police seeking 'C' summary and decided to take cognizance of the alleged offences against the petitioners by his order dated 4.9.1997 and ordered to issue non-bailable warrants. The said impugned order of the learned Magistrate at Sanand is at Annexure 'B'. The petitioners have challenged the said order at Annexure 'B' praying to quash and set aside the F.I.R. on the ground that no offence is constituted against the petitioners and taking cognizance by the learned Magistrate of the alleged offences would amount to abuse of the process of the Court.

I have heard Mr.P.R.Nanavati, learned Advocate appearing for the petitioners, and Mr.V.M.Pancholi for respondent No.2. Mr.A.J.Desai, learned APP, appearing for the respondent No.1, has also made his submissions.

The learned Magistrate, refusing to accept the police-report, observed that the offence was committed when the F.I.R. was lodged; however, due to compromise and settlement between the parties, the police-statements are inconsistent and contrary to the complaint and therefore, according to the learned Magistrate, the alleged offences can be said to have been committed by

the petitioners. The learned Magistrate also observed that the Investigating Officer cannot make a report in view of such police-statements of the witnesses. The view taken by the learned Magistrate appears to be erroneous and improper, in view of the facts and circumstances of the case, inasmuch as the witnesses have stated before the Police in their respective statements that there was no kidnapping of Girishkumar Manilal Patel so as to constitute the offence under section 365 of the Indian Penal Code, and the respondent No.2, who is a stranger to the whole episode, had lodged the complaint on presumption that as per his information, there appears to be illicit relationship between the petitioners Nos.1 and 2. The second respondent has also given further statement on 30.12.1996 wherein he has not supported the case of the prosecution. If the trial is proceeded on this police-material, there can never be any conviction of the accused persons, and the police was justified in seeking 'C' Summary on basis of all these police-statements.

It is, therefore, clear from all the statements recorded by the police during the course of the investigation into the alleged offences that there is no prima facie offence made out against the petitioners and that there is no iota of evidence on basis of which the trial in respect of the alleged offences could be commenced. In the facts and circumstances of the case, the learned Magistrate has taken an erroneous view of taking cognizance and issuing non-bailable warrants against the accused persons. The records and proceedings of the case are called for and on perusal of the same, it is clear that there is no prima facie offence made out on basis of the police-statements recorded during the course of the investigation. Thus, having regard to the overall facts and circumstances of the case, no offence, prima facie, is made out so as to hold the petitioners liable for the offences under section 365 read with section 504 of the Indian Penal Code, as there is no chance of petitioners being convicted at the trial for the said offences.

In the above view of the matter, the impugned order dated 4.9.1997 passed by the learned Judicial Magistrate, First Class at Sanand, rejecting the final report by the police to permit 'C' Summary, is hereby ordered to be quashed and set aside. The complaint, being C.R.No.I-343/96 at Sanand Police Station, is also quashed. Rule is accordingly made absolute.

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